



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/160796

PRELIMINARY RECITALS

Pursuant to a petition filed September 22, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a telephonic hearing was held on October 16, 2014.

The issue for determination is whether petitioner was overpaid FS.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. Petitioner completed a six month review form (SMRF) in January 2014. She failed to report her son's earned income.
3. On July 16, 2014 the agency issued a notice of decision to petitioner stating that she was overpaid FS from February to July 2014 in the amount of \$2752 due to client error. Exhibit 2.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); See also FS Handbook, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

Here, the agency argues that the petitioner did not report all of her household income, specifically her son's earned income, and therefore she received more FS than she was eligible for.

Petitioner did not dispute that she did not report the income, but rather testified that this failure to report was not intentional. She also did not dispute the fact that when requested, she failed to provide paystubs covering all of the months requested, presumably missing the additional text in the request. See Exhibit 6. Because she didn't provide all of the requested paystubs, the agency took a total overpayment for the months of February – May. And because she only provided June's paystubs, the agency used the same income for July. Still, the agency must prove that it is entitled to recover the amount it says is due. Agencies are instructed when determining an overpayment to “[o]nly use the income and expenses reported or required to be reported for each month of the adjustment period.” FS Handbook §7.3.2.1. When determining earned income, the agency must count “income only for the month in which it is received.” FS Handbook, §4.3.2. This is based on the simple premise that the less money a person has at any particular time, the less he can spend on food. When determining future benefits, the agency must always make an educated guess about a recipient's income based upon his past and current circumstances. When recovering an overpayment, it generally is no longer necessary to guess at what the recipient earned—assuming the agency can gather sufficient information about his income during the alleged overpayment period. Accordingly, the agency will need the son's paystubs for those months in order to make an accurate determination.

Further complicating the overpayment determination is petitioner's belief that her son's income was not going to be considered by the agency because he was a student at [REDACTED] and working. FS policy states in part that anyone, age 18-49, enrolled half time or more, in an institution of higher education is ineligible, unless he is employed at least 20 hours a week with earnings equal to at least the federal minimum wage. *FoodShare Wisconsin Handbook*, §3.15.1. Accordingly, in order to make an accurate determination of the overpayment, the agency will need more information about his FS eligibility as a student. As suggested at hearing, the agency will likely need a copy of his school schedule for the 2014 spring semester.

Based on the foregoing, I am remanding the matter so that the agency may review all of the information needed to make an accurate overpayment determination. The agency will need to make a specific request for the paystubs and school information, or anything else it may need to redetermine the overpayment. Accordingly, I am adding days to the remand to allow for this. The petitioner will then need to timely provide that information to the agency. If the petitioner has any trouble providing the information, she will need to let the agency know so that she does not miss the deadline to provide it. In the event an overpayment is still found, she is reminded that if she still has an open FS case that she may make arrangements for having her overpayment taken out of her current FS allotment per month, or make other arrangements for the repayment of the debt as described in the notice of overpayment.

CONCLUSIONS OF LAW

1. There is insufficient evidence to determine what if any overpayment the petitioner had from February to July 2014.

THEREFORE, it is**ORDERED**

That this matter is remanded to the county agency with instructions that it (1) request petitioner's son's employment information from February to May, and July 2014 and any necessary information to determine the son's student status, giving petitioner at least 10 days to produce that information; if that information is provided timely to the agency, then the agency shall (2) redetermine how much, if any, FoodShare that the petitioner was overpaid from February to July 2014 and issue a notice to petitioner regarding same. The agency shall make the verification request within 10 days of the date of this Decision, with a final determination on the overpayment to be accomplished within 30 days of the date of this Decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 30th day of October, 2014

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 30, 2014.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability